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DEC

Nos. 42 and 43

In the Supreme Court of the United States

OCTOBER TERM, 1930

THE UNITED STATES OF AMERICA, PETITIONER

v.

BOSTON BUICK COMPANY

THE UNITED STATES OF AMERICA, PETITIONER

v.

IRON CAP COPPER COMPANY

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE UNITED STATES

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OPINIONS BELOW

The opinions of the District Court for the District of Massachusetts (*Boston Buick Company,* R. 14; *Iron Cap Copper Co.,* R. 34) are reported in 27 F. (2d) 395 and 31 F. (2d) 628, respectively. The opinion of the Circuit Court of Appeals for the First Circuit (*Boston Buick Company,* R. 19; *Iron Cap Copper Co.,* R. 37) is reported in 35 F. (2d) 560.

JURISDICTION

The judgments of the Circuit Court of Appeals for the First Circuit were entered on November 5, 1929. (*Boston Buick Company*, R. 18; *Iron Cap Copper Co.*, R. 36.) Petition for certiorari was filed February 5, 1930, and certiorari was granted March 17, 1930, 281 U. S. 709. (R. 23.) The jurisdiction of this Court rests on Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTION PRESENTED

The question involved in these cases is whether interest on an overpayment of taxes for one year applied as a credit against taxes due for another year should be computed in accordance with the provisions of Section 1324 (a) of the Revenue Act of 1921 or in accordance with the provisions of Section 1019 of the Revenue Act of 1924. (These sections appear in Appendix A, pp. 40–42, *infra*.)

The date of the allowance of the credit is material because if it was "allowed" *before* June 2, 1924 (the effective date of the Revenue Act of 1924), the legal effect of the allowance is determined under the Revenue Act of 1921, while if it was "allowed" *after* June 2, 1924, the legal effect is determined under the Revenue Act of 1924.

It is agreed that interest should be computed under the Act in force when the credit was allowed, as was held with reference to the computation of

interest on refunds in *Blair* v. *Birkenstock,* 271 U. S. 348, and *United States* v. *Magnolia Petroleum Company,* 276 U. S. 160.

If the credits in these cases were allowed before June 2, 1924, and therefore under the Act of 1921, interest on the credit would run *to* the date of allowance of the credit but only *from* six months after the date of filing of claim for refund or credit by respondents. If the credits were allowed after June 2, 1924, and under the Act of 1924, interest would run *from* date of payment of tax *to* the dates of the additional assessments against which the overpayments were credited. The latter is the more advantageous to the respondents.

In the instant case, prior to the passage of the Revenue Act of 1924, the Commissioner of Internal Revenue signed the certificates appearing on a schedule of overassessments, Form 7805, stating that the overassessments appearing thereon had been allowed and directing the Collector to apply any overpayments against any taxes due from the taxpayers for other years. Subsequent to the passage of the Revenue Act of 1924, the Collector made his entries upon the schedule of overassessments and returned it together with a subsidiary schedule, known as Schedule of Refunds and Credits, on which he certified to the Commissioner the amounts which had been applied on the taxpayer's accounts as abatements and credits, showing the amounts which appeared to be

refundable to the several taxpayers. Thereafter the Commissioner signed the authorization to the disbursing clerk to make payments of the amounts refundable.

The petitioner contends that a credit was allowed when the Commissioner signed the schedule of overassessments with the authorization to the Collector, and the respondents contend that credit was allowed either when the Collector applied the credit on unpaid taxes or when the Commissioner signed the schedule of refunds and credits after the credits had been applied.

STATUTES AND REGULATIONS INVOLVED

The statutes and regulations involved are set forth in Appendix A, *infra*, pp. 38–45.

STATEMENT

The facts in the two cases are almost identical except for the dates involved, and no legal significance attaches to this difference in dates. In each the taxpayer was notified by the Commissioner of Internal Revenue of an overassessment in its income and profits taxes for the year 1918. (*Boston Buick Co.* R. 5; *Iron Cap Copper Co.* R. 6.) On March 14, 1924, and March 29, 1924, the Commissioner certified his approval upon schedules of overassessments, on Form 7805, on each of which was listed one of the overassessments in question. (*Boston Buick Co.* R. 5; *Iron Cap Copper Co.* R. 6.) These schedules were forwarded to the Collector

of Internal Revenue at Boston with directions that he check the accounts of the taxpayers whose names appeared on the schedule, determine whether or not their liabilities should be reduced by abatements and if so make such abatements, and "if any part of such item is found to be an overpayment, you will examine all accounts of the taxpayer for other periods and apply the overpayment as a credit against the taxes due, if any, making the appropriate entries in your accounts." (*Boston Buick Co.* R. 6, 7; *Iron Cap Copper Co.* R. 7, 12.) The Revenue Act of 1924 was enacted on June 2, 1924. The Collector followed the directions of the Commissioner, and on July 11, 1924, and July 14, 1924, made the entries in his accounts and returned Form 7805 with Form 7805–A, on which he stated what amount of the overassessment had been abated, what amount of the remaining overpayment had been credited against deficiencies for other years, and what amount was refundable. (*Boston Buick Co.* R. 5; *Iron Cap Copper Co.* R. 7.) In the *Boston Buick Co. case* no amount was refundable, as the whole overpayment was applied by the Collector as a credit. (*Boston Buick Co.* R. 9.)

In the *Iron Cap Copper case*, on August 7, 1924, the Deputy Commissioner certified to the Commissioner the amount found refundable, and on the same day the Commissioner signed the authorization on Form 7805–A, which authorized the disbursing clerk of the Treasury Department

to pay to the taxpayer the amount refundable. (*Iron Cap Copper Co.*, R. 13.) In the *Boston Buick Co. case*, as nothing was refundable (*Boston Buick Co.*, R. 9), the certificate signed by the Deputy Commissioner, the schedule of refunds and credits signed by the Commissioner,[1] and the order sent to the disbursing clerk referred merely to the accounts of other taxpayers shown on the same schedule.

The Commissioner computed interest under the Revenue Act of 1921. The taxpayers contended that the credits were allowed subsequent to the enactment of the Revenue Act of 1924 on June 2, 1924, and that interest on the credits should be computed under Section 1019 of that Act. After due rejection of their claims, suits were brought in the District Court. That court gave judgment for the taxpayers, holding in the *Boston Buick Co. case* that the credits were allowed either when the Collector signed his certificate or when the Commissioner authorized the disbursing clerk to pay the refunds due other taxpayers listed on the same schedule (R. 16), and in the *Iron Cap Copper Co. case* that the credits were allowed at the date the Commissioner authorized the disbursing clerk to pay the refunds to the Iron Cap Copper Co. (R.

[1] By some error this schedule of refunds and credits as printed at page 8 of the *Boston Buick Co.* record does not bear the signatures of the Commissioner and Deputy Commissioner. The certificates on the original schedule were signed by these officials.

35.) The Circuit Court of Appeals for the First Circuit affirmed both judgments, holding that the allowance of a credit occurred when the Commissioner of Internal Revenue certified to the disbursing clerk of the Treasury that the amounts shown to be refundable on a schedule of refunds, Form 7805–A, should be paid, and saying that since the certification was made in each case after the passage of the Revenue Act of 1924, interest should be computed in accordance with the provisions of that Act.

In so holding the Circuit Court of Appeals relied principally upon the decision of this Court in *Girard Trust Co.* v. *United States,* 270 U. S. 163, in which it was held that a refund is allowed when the Commissioner signs Form 7805–A authorizing the disbursing clerk to pay the amounts shown on the schedule of refunds and credits, Form 7805–A.

It is our view that the instant cases are not so controlled by the decision in the *Girard Trust Company case* and that the allowance of a credit did not occur at the same time as did the allowance of a refund.

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

1. In holding that a credit of an overpayment of income and profits taxes for one year against taxes due for another year was allowed when the Commissioner of Internal Revenue signed a subsidiary schedule of refunds and credits (Form

7805–A), directing the disbursing clerk of the Treasury to pay the amounts listed thereon as refundable.

2. In not holding that such credit was allowed when the Commissioner signed the certificate on the schedule of overassessments (Form 7805) stating that he had allowed the overassessments appearing thereon and directing the Collector of Internal Revenue to apply any overassessments found to be overpayments as a credit against any taxes due for other years.

SUMMARY OF ARGUMENT

I. The Commissioner of Internal Revenue is the official who has authority to determine overassessments. The Collector merely carries out orders of the Commissioner. The Commissioner signs a schedule of overassessments which directs the Collector to check the items appearing thereon against the accounts of the several taxpayers and determine whether the amounts in which the tax liabilities are reduced should be respectively abated in whole or in part; to make such abatements as may be warranted, and then, if any part of the item is found to be an overpayment, to apply the overpayment as a credit against other taxes due. This is the final authorization by a competent authority that an overpayment shall be applied as a credit. The Collector merely does the routine work necessary to comply with the directions of the Commissioner, and then sends to the Commissioner a schedule of

refunds and credits showing the disposition of the amount of the overpayment. When this schedule is received in the office of the Commissioner, the Deputy Commissioner goes over it and certifies to the Commissioner a list of items found to be the refundable portions of overassessments theretofore allowed. The Commissioner then authorizes the disbursing clerk in the Treasury Department to make payment of the refundable portions of the overassessments.

II. The word "allowance" as used in the statute means "authorization" rather than "payment" or "ratification". "Authorization" and "permission" have been judicially defined as synonymous with "allowance." Allowance implies discretionary action rather than the performance of a ministerial duty. The act of the Commissioner in signing the schedule of overassessments is the only exercise of discretionary judgment in the allowance of a credit. The application of the credit following the signing of the schedule of overassessments is a routine matter. The allowance of a credit must precede the payment by the credit. The *Girard Trust Company case,* in deciding that the allowance of a refund is the final decision (prior to the actual payment) that it should be made, supports this construction.

III. This construction has been adopted by the regulations of the Treasury Department. The reenactment of the statutory language involved after

this administrative interpretation is Congressional approval of this construction.

ARGUMENT

I

IN THE ADMINISTRATION OF THE TAX LAWS, THE FINAL DECISION BY A COMPETENT AUTHORITY THAT AN OVERPAYMENT SHALL BE APPLIED AS A CREDIT IS MADE WHEN THE COMMISSIONER SIGNS THE SCHEDULE OF OVERASSESSMENTS

A brief description of the procedure of the Bureau of Internal Revenue [2] will supply the background against which the wording of the administrative provision of the tax statute must be considered. Prior to February, 1922, there were no certificates of overassessment and, therefore, no schedules of overassessment. The allowance of a claim for credit had no necessary connection with the allowance of a claim for refund. If a credit claim was filed, it was listed on a credit schedule and transmitted to the appropriate Collector. The same procedure applied to abatements. The approval of a credit schedule was considered final, and no report was made by the Collector to the Commissioner subsequent to its approval or allowance by the Commissioner. Claims for refund were not scheduled to the Collector. When allowed by the Commissioner, they were sent directly to the disbursing clerk of the Treasury for the issuance of checks. The result was that it frequently

[2] See *Iron Cap Copper Co.* R. 21–29.

happened that refunds would be allowed and paid while there was an outstanding unpaid tax liability.

It was to meet this situation that the use of the certificate of overassessment was adopted. It became effective February 2, 1922. Certificates of overassessment were scheduled on what was first known as Form 7777, and the schedules were transmitted to the Collector with the certificate of the Commissioner. The certificates on Form 7777 were practically like those appearing on Form 7805 used in the instant cases. They contained a certificate that the reduction of tax liability was approved and allowed, and a direction to the Collector (1) to check the accounts of the taxpayer for the year in question and to abate so much of the assessment as was necessary and then, if any part of the tax was found to be an overpayment, (2) to apply such overpayment as a credit against taxes due from the taxpayer, and then, if this application left a balance overpaid, (3) to enter the same in the appropriate columns on the schedules and return the same to the Commissioner. The Collector on the same form certified the amounts which had been applied as abatements and credits and also the amount of overpaid balance. He returned with this schedule a subsidiary schedule of refunds on Form 7777–A. Upon receipt of these two schedules in the Commissioner's office, the Deputy Commissioner certified on Form 7777–A that the items had been examined and that the amounts of over-

payment to be refunded by disbursement checks, as indicated therein, had been found due. There was no reference to credits in the certificates on the subsidiary schedule of refunds (Form 7777–A).

The Revenue Act of 1921, which became effective November 23, 1921, was the first Act to provide for the payment of interest upon the allowance of claims for credit and refund. The subsidiary schedule, Form 7777–A, had been prepared merely to effect payment of refund items. As the findings here recite:

> If the entire amount of the overassessment was either abated or credited, the collector was under instructions to mail the original certificate of overassessment to the taxpayer. If it appeared that any amount was to be refunded, his instructions were to return the original certificate of overassessment to the Bureau, with copies of the schedules of overassessments and the original schedule of refunds. (*Iron Cap Copper Co.*, R. 23.)

There was no place on Form 7777–A for the entry of amounts of interest due on credit claims. In order to enable the Commissioner to refund interest on credits, it was necessary to type credit items. Therefore, the forms were revised and reissued as Forms 7805 and 7805–A, which correspond with the schedules in the instant cases. The new Form 7805–A was entitled "Schedule of Refunds and Credits," and an additional col-

umn was added to the printed form and was entitled "Amount Credited." These schedules are printed in the *Boston Buick Co.* Record, pages 6–9, and the *Iron Cap Copper Co.* Record, pages 12 and 13. A copy of each form is shown in Appendix B, *infra*, p. 46.

The purpose for which the schedules were returned from the Collector to the Commissioner was to enable the latter to check the Collector's adjustments and determine whether refunds and interest on the refunds and credits should be paid. When this subsidiary schedule reached the Commissioner, the Collector's recommendation as to the amount of the refund was checked before the Commissioner signed the authorization to the disbursing clerk.

It is argued in the respondent's brief in opposition to the petition for certiorari in the *Iron Cap Copper Co. case* (pp. 34, 35) that the certificate of overassessment (not to be confused with the schedule of overassessments) followed the final approval of the schedule of refunds and credits by the Commissioner. This certificate states that the amount of overassessment "will be abated, credited, or refunded as indicated below." From this it is argued that even at this late date the credit is apparently to be made in the future. This argument is unsound and misleading. It ignores the finding of fact that the certificate of overassessment is prepared before the schedule of overassessments and that the certificate of over-

assessment and the schedule of overassessments are forwarded together by the Commissioner to the Collector. The signing of the certificate of overassessment by the Deputy Commissioner precedes the signing of the schedule of overassessments by the Commissioner. It is prepared and signed before the credit is allowed. (*Iron Cap Copper Co.* R. 21.)

The authority and duties of the Commissioner and the Collector are statutory.

Section 3220, Revised Statutes (Revenue Act of 1921, c. 136, 42 Stat. 227, 314) provides in part:

> The Commissioner of Internal Revenue, subject to regulations prescribed by the Secretary of the Treasury, is authorized to remit, refund, and pay back all taxes erroneously or illegally assessed or collected, all penalties collected without authority, and all taxes that appear to be unjustly assessed or excessive in amount, or in any manner wrongfully collected: * * *.

Revised Statutes, Section 3218 (U. S. C., Title 26, Sec. 147), provides in part:

> Every collector shall be charged with the whole amount of taxes, whether contained in lists transmitted to him by the Commissioner of Internal Revenue, or by other collectors, or delivered to him by his predecessor in office, and with the additions thereto, with the par value of all stamps deposited

> with him, and with all moneys collected for penalties, forfeitures, fees, or costs: * * *.

The relation of these two officials is such that the Commissioner's directions are to be carried out by the Collector. Thus, after determining overassessments, the Commissioner listed a number of certificates of overassessment on a schedule of overassessments, Form 7805 (*Boston Buick Co.*, R. 6; *Iron Cap Copper Co.*, R. 12; Appendix B, *infra*, p. 46), and transmitted the schedule to the Collector with directions as follows:

> The amounts listed in column 4 as overassessments * * * are hereby approved and * * * allowed in the respective amounts * * *.
>
> You will immediately check such items against the accounts of the several taxpayers * * * and make such abatements as may be warranted * * *.
>
> If any part of such item is found to be an overpayment, you will examine all accounts of the taxpayer for other periods and apply the overpayment as a credit against the taxes due, if any, making the appropriate entries in your accounts.

This was the authorization which the Government contends was the *allowance* of a credit. The District Court said of this (*Boston Buick Co.*, R. 16):

> It will be noted that the collector, without further action on the part of the commissioner, was authorized to enter upon the

> petitioner's account a credit against outstanding taxes due from it. His authority to record this credit was contained in the schedule of overassessments.

Under this authority the Collector credited the entire amount of the overpayment of the Boston Buick Co. against taxes for other years. There was no balance to be refunded. Part of the overpayment of the Iron Cap Copper Co. was used as a credit and a part was left to be refunded. The Collector in each case then signed a certificate on Form 7805, prepared by the Commissioner, in which he certified to the Commissioner "* * * the amounts indicated *have been applied as* abatements and *credits* * * *." (Italics ours.) These certificates indicate that the credits were allowed or authorized by the Commissioner when he certified to the Collector, and that the credits had actually been made when the Collector certified to the Commissioner. The application of the credit was then an accomplished fact. The taxpayers' indebtedness to the extent of the applied credit was finally and completely paid.

The subsequent certification by the Commissioner to the disbursing clerk of the Treasury has no bearing upon the allowance of a credit.

The disbursing clerk of the Treasury Department is, as his name implies, a clerk appointed by the Secretary of the Treasury, under bond, authorized to sign warrants on the Treasury Department

for the payment of money when properly authorized so to do. He has no part either in the assessment or collection of taxes. His sole duty is to execute checks or warrants only upon vouchers executed by competent authority. He is concerned only with the payment of money from the Treasury of the United States.

The certificate to him from the Commissioner stated (*Boston Buick Co.* R. 8; *Iron Cap Copper Co.* R. 13):

> The items listed in column 4 hereof have been found to be the refundable portions of overassessments heretofore allowed, and the accrued interest, if any, listed in column 6 has been found due. Payment may, therefore, be made in the amounts shown in column 7.

Neither in this certificate nor in the columns referred to is any mention of credits made directly or indirectly.

It is apparent from the authority conferred by Congress upon the Commissioner that he is the only one who may reduce an assessment of tax, or, in other words, allow an overassessment. He is the only one who may authorize a credit. He is the only one who may allow a tax, once paid, to be repaid or refunded.

It is also apparent that the Collector's entire duty is to collect the taxes assessed by the Commissioner. He may not abate an assessment, credit an overpayment, or refund an overpayment

on his own initiative. But he has the power and the duty to abate an assessment which appears on the account of a taxpayer when the abatement has been allowed by the Commissioner and the tax has not been paid by the taxpayer. It is also his duty to credit an overpayment of taxes for one year against taxes due for another year, but only after authorization by the Commissioner.

As the Collector may not refund taxes and as the disbursing clerk of the Treasury may not credit taxes, and as the two officers have no connection either directly or indirectly with each other, it is difficult to comprehend how an authorization of the Commissioner to the disbursing clerk of the Treasury to pay money can in any way be construed as the allowance of a credit which may be made by the Collector. The Special Findings of Fact in the *Iron Cap Copper Co. case*, state (R. 26, 29):

> No other action was taken by the commissioner with reference to credits other than what appears on the schedule of overassessments on Form 7805 and with reference to interest on credits that appears on Form 7805–A.
>
> * * * * *
>
> Under the regular procedure there is no other communication, authorization, or instruction from the commissioner to the collector with reference to the overassessments except what is contained on the schedule of overassessments. This was true in the present case.

> After the allowance of the overassessment there remains just routine matter in applying the overassessment to the status of the taxpayer's account. The law requires an overpayment to be credited to outstanding taxes. The commissioner's instruction to the collector on the schedule of overassessments is that he shall apply the overassessment to the taxpayer's account.

Since the certificate on this schedule of overassessments is the only word with reference to credits which passes from the Commissioner to the Collector, his intent must be to allow a credit when he signs this authorization to the Collector and not when he signs the authorization to the disbursing clerk appearing on the schedule of refunds.

The Commissioner need not know the exact amount to be credited in advance of allowance. Since January, 1927, with the adoption of Form 7920 (*Iron Cap Copper Co.*, R. 26–28), which superseded Form 7805 and Form 7805–A, the Commissioner has not known the amounts to be abated, the amounts to be credited, or the amounts to be refunded. But no one will question that the signing of the certificate on Form 7920 now in use constitutes an allowance by the Commissioner of abatements, credits, and refunds. It is to be noted Section 1116 (b) (2) of the Revenue Act of 1926 (*infra*, pp. 43–44) expressly provides that the date of allowance of a claim for refund is the date on which the Commissioner signs the schedule of overassessments.

II

THE "ALLOWANCE" OF A CREDIT, REFERRED TO IN SECTION 1324 (A) OF THE REVENUE ACT OF 1921 AND SECTION 1019 OF THE REVENUE ACT OF 1924, IS THE AUTHORIZATION OF A CREDIT BY THE COMMISSIONER WHEN HE SIGNS THE SCHEDULE OF OVERASSESSMENTS

A. The word "allowance" as used in these sections in the clause "the allowance of a credit or refund" means "authorization" rather than "payment" or "ratification"

Section 1324 (a) of the Revenue Act of 1921 (*infra*, p. 40) provides that—

> upon the allowance of a claim for the refund of or credit for internal revenue taxes paid, interest shall be allowed and paid upon the total amount of such refund or credit at the rate * * *.

The word "allowance" is used similarly in regard to both credits and refunds in the other pertinent statutes.

"Authorization" is a common meaning of "allowance." In considering what was an allowance of a transfer of a fire-insurance policy, the Supreme Court of Pennsylvania in *Marshall* v. *Franklin Fire Insurance Company of Philadelphia*, 176 Pa. 628, said:

> This depends upon the construction of the word "allow." This word is ordinarily equivalent to the word "permit," or to the words "consent to." Its use in any given case assumes the existence of a power to

> refuse to allow, permit, or consent to, and the right to elect whether to grant or withhold the allowance or permission asked for.

The word "allow" is also commonly used in regard to appeals permitted by statute. In *Castro* v. *United States*, 3 Wall. 46, this Court used the word in this sense, saying "we have no jurisdiction of this appeal unless it has been *allowed* by some act of Congress and has been brought in substantial conformity with the legislative directions." (Italics ours.)

In *Johnson* v. *Fleet Corporation*, 280 U. S. 320, 327, this Court said:

> Putting the United States and the Fleet Corporation on the same footing and providing remedies to be exclusive in admiralty would not serve substantially to establish uniformity if suits under the Tucker Act and in the Court of Claims be *allowed* against the United States and actions at law in state and federal courts be permitted against the Fleet Corporation * * *. (Italics ours.)

This Court has already defined the "allowance of a refund" in *Girard Trust Co.* v. *United States*, 270 U. S. 163, 169, *supra*, in which it said:

> Allowance in its ordinary sense does not mean payment, and in the practical administration of the Treasury Department the two things are quite different. The one is a decision by the competent authority that the payment should be made. The other is

> the actual payment. The Commissioner of Internal Revenue is the final judge in the administrative branch of the Government to decide that an overassessment has been made and that a refund or credit should be granted, and when he has made that decision finally, he has allowed the claim for the refund or credit of the taxes paid within the meaning of the section.

The *Girard Trust Co. case* applied this definition only to the allowance of a refund but construed the word "allowance" involved here to mean "authorization." We contend that the allowance must precede the actual payment of the tax by application of the credit and that the allowance is a decision by competent authority that the credit should be made. The actual crediting is the entry upon the taxpayer's account by the Collector after allowance.

Section 250 (b) of the Revenue Act of 1921 provides in part:

> That as soon as practicable after the return is filed the Commissioner shall examine it. * * * if the amount already paid exceeds the correct amount of the tax, the excess shall be credited or refunded to the taxpayer in accordance with the provisions of Section 252.

And Section 252 provides in part:

> if, upon examination of any return * * * it appears that an amount of income * * * tax has been paid in excess of that properly due, then * * * the

> amount of the excess shall be credited against any income * * * taxes * * * then due from the taxpayer under any other return, and any balance of such excess shall be immediately refunded to the taxpayer.

From these sections it is apparent that Congress intended that the Commissioner should take two steps with reference to an overpayment. First, that he should allow a credit to be made to the extent of the outstanding taxes then due if within the limit of the overpayment; and second, if after the allowance and the application of the credit there was any balance, that he should then refund the balance.

The signing of the schedule of overassessments by the Commissioner is the ultimate act that precedes the payment of the tax by application of the credit. It is the executive justification for the act of the Collector in the application of the credit. The function of the Collector after the receipt of the authorization from the Commissioner in the form of the schedule of overassessments is the performance of a statutory and ministerial duty. His responsibility is the arithmetical determination of the status of the taxpayer's account and the payment of the tax due by the application of the credit from the overpayment.

Under the practice it is impossible to determine that there will be a refund until after the allowance and application of a credit. As in the *Boston Buick*

Co. case, the overpayment may be exhausted by the credit so that there will be no refund. There is then no reason for the Commissioner to take any further action. Had there not been accounts of other taxpayers set out on the same Form 7805–A which contained the records of the Boston Buick Co., the certificate on the schedule of refunds and credits would not have been signed by the Commissioner. Under the rule of the *Girard Trust Co. case*, no refund would have been allowed, and yet the credit in fact had already been allowed and applied. The special findings in the *Iron Cap Copper Co. case* describe the procedure in such a case (R. 26):

> In the event that Schedule 7805–A disclosed no refundable items of tax and no interest allowable on credits which had been allowed, the instructions were to mark the original schedule of refunds and credits as cancelled, place it in a special loose-leaf binder for reference, if necessary, to likewise mark the bureau record copy as cancelled, indicate where the original was on file and file the bureau record copy in its proper place, according to the serial number. In these cases, no certificate was signed by the Commissioner of Internal Revenue.

This demonstrates that a credit was allowed prior to the allowance of a refund and without regard to whether in fact any refund was to be allowed. The fact that the Commissioner might check the adjustments of the Collector after the tax

has been paid by the application of the credit does not change the finality of his decision allowing the credit. See *Girard Trust Co.* v. *United States*, 270 U. S. 163, 170.

That interest on the credit may be due does not change the date of allowance of the credit. Interest on credits is dealt with and paid like a refund. (*Iron Cap Copper Co.*, R. 34.) The computation and payment of interest on the credit is a separate and distinct transaction from the allowance and application of the credit.

In the instant cases the Circuit Court of Appeals held in substance that "allowance" should be construed to mean "ratification." (*Boston Buick Co.* R. 22; *Iron Cap Copper Co.* R. 40.) As applied to the instant case, this means approval of the credit already applied against the taxpayers' indebtedness by the Collector. The certificate of the Collector to the Commissioner unequivocally states that "the amounts indicated have been applied as abatements and credits on their [taxpayers'] accounts" (*Boston Buick Co.* R. 6; *Iron Cap Copper Co.* R. 12). The application of the credit against the indebtedness is then an accomplished fact. Any action of the Commissioner after the receipt of this certificate from the Collector would of necessity be confined to an approval or ratification. This is a recognized meaning of allowance, but in view of the *Girard Trust Co.* decision that allowance of a refund means

the authorization before payment, we submit that it should be given a similar meaning as to credits. The statute reads: "That upon the allowance of a claim for the refund of or credit for internal revenue taxes paid * * *." To construe a single word with conflicting interpretations as applied to two modifying phrases in the same sentence is ungrammatical and incongruous. The taxpayers argue from the *Girard Trust Co.* decision that there can be no allowance of a credit until the exact amount of the credit is determined, but we submit that this consideration does not justify the strained interpretation of allowance to mean ratification.

It may be urged that the credit is allowed when the Collector determines for the first time the exact amount of the credit and applies it on the taxpayer's account. This would mean that the allowance, and application of, the credit are simultaneous acts of the Collector. This is inconsistent with this Court's statement in the *Girard Trust Co.* case that "allowance" in this statute is not payment, but the decision that payment be made. The application of a credit is the payment of the tax against which the credit is applied. The Collector has no statutory authority to allow either a credit or refund. (See pp. 14–18, *supra.*) That function is conferred exclusively upon the Commissioner.

This view is also inconsistent with the view of Congress as shown by the Revenue Act of 1926. By Section 1116 (b) (2) of that Act (*infra*, pp.

43–44), Congress changed the law as stated by the *Girard Trust Co. case,* and declared that a refund is allowed when the Commissioner signs the schedule of overassessments. It is, we submit, impossible as a matter of bookkeeping to *allow a refund* before the *allowance of a credit,* for, as in the *Boston Buick Co. case,* there may be no refund if the credit exhausts the overpayment. Thus the Revenue Act of 1926 shows that Congress must have intended that a credit be allowed not later than when the refund is authorized by the Commissioner's signature on the schedule of overassessments. Yet in enacting that Act no change was made as to the date of allowance of a credit. There has been no Congressional definition of the allowance of a credit. Substantially the same language in reference to the allowance of a credit is used in the Revenue Acts of 1921, 1924, and 1926. "The allowance of a credit" in Section 1116 (a) of the Revenue Act of 1926 is used in the same connection and has the same significance as "the allowance of a credit" in Section 1019 of the Revenue Act of 1924 and as "the allowance of a claim for credit" in Section 1324 (a) of the Revenue Act of 1921. We submit that this phrase is used in the three Revenue Acts in the same sense, and that if a credit is allowed under the Revenue Act of 1926 when the Commissioner signs the schedule of overassessments, then under the prior statutes which control the instant case, a credit is allowed not by the Col-

lector, but by the Commissioner on the date when he signs the schedule of overassessments.

Moreover, under the Revenue Act of 1926 Congress considered that a credit could be allowed before it was "taken." Section 1116 (c) of the 1926 Act provides:

> This section shall be applicable to any refund paid, and to any credit taken, on or after the date of the enactment of this Act, even though such refund or credit was allowed prior to such date.

As contended by the Government in its brief in the *Pottstown Iron Co. case*, No. 113, October Term, 1930, a credit is *taken* when the tax is paid by application of that credit. This is done, we submit, either when the Collector makes entries in his records that the tax obligation is satisfied, or when he certifies to the Commissioner that this has been done. These acts necessarily precede the signing by the Commissioner of the schedule of refunds and credits. Therefore, the language of Section 1116 (c) indicates that under the 1926 Act a credit is not allowed upon the signing of that subsidiary schedule. But the signing of the schedule of overassessments necessarily precedes the act which constitutes the "taking of a credit." Thus the language of Section 1116 (c) of the 1926 Act supplies additional evidence that Congress regarded that a credit is *allowed* when the Commissioner signs the schedule of overassessments.

B. The decision of this Court in Girard Trust Company v. United States, 270 U. S. 163, supports this construction

The trial court, in the *Iron Cap Copper Co. case*, in commenting on the contention of the Government that the credit was allowed when the Commissioner signed the authorization to the Collector, said (*Iron Cap Copper Co.*, R. 35):

> The difficulty with this argument is that it ignores the decision of the Supreme Court of the United States in Girard Trust Co. in 270 U. S. 163, and of this court in Boston Buick Company *vs.* United States in 27 F. 2, 395.

In the *Girard Trust Co. case* the Commissioner signed a schedule of overassessments on December 9, 1922, on which appeared an overassessment in favor of the Girard Trust Company of $182,583.72 for the year 1920, and $107,372.36 for the year 1917, and transmitted the same to the Collector with the instructions appearing thereon. The Collector examined the taxpayer's account, applied $98,101.29 of the overassessment for the year 1920 as an abatement, credited $21.41 against taxes for other years, and reported $84,416.02 as an excess overpayment after making the credit. The $107,372.36 for the year 1917 was reported as an overpayment and was also reported as refundable. The authorization to the disbursing clerk to pay the amounts refundable was signed by the Commissioner on January 16, 1923. The checks covering

the amount of the refunds were mailed to the Girard Trust Co., together with checks for interest computed to December 9, 1922, on the theory that the refunds were allowed on the date on which the Commissioner signed the schedule of overassessments.

It was the contention of the Girard Trust Company that under Section 1324 (a) of the Revenue Act of 1921, it was entitled to interest to the date of *payment* of the refunds on the theory that the allowance was not made until the refund was paid. The Government contended that the refund was allowed on the date on which the Commissioner signed the schedule of overassessments. No question was raised as to interest on the $21.41 credited, and neither before the Court of Claims nor before this Court was the question discussed as to when a credit was allowed, and no distinction was drawn in the briefs of either party between the allowance of a credit and the allowance of a refund. This Court held that the refund was allowed upon the decision by competent authority that the payment should be made, and that this decision was made when the Commissioner signed the schedule of refunds and credits.

This Court there said that the findings and exhibits show that the course of business is that the Collector, on receiving from the Commissioner the schedule of overassessments examines his books and reports back to the Bureau the amount which

"should be credited" on taxes due and the amount to be refunded. This is not a correct statement of the practice shown to be in effect in the instant cases, for the reason that the Collector does not report the amount that "should" be credited and refunded. The certificate of the Collector in the *Girard Trust Co. case* is the same as the certificates found on Forms 7777 and 7777–A. The Collector reported in the *Girard Trust Co. case*, as appears from the record in that case (No. 137, Oct. Term, 1925, R. 8):

> The items in this schedule have been checked against the accounts of the respective taxpayers concerned and the amounts indicated *have been applied* as abatements and credits on their accounts.
>
> The amounts of overpayment and the net amounts refundable have been determined to be as indicated herein. (Italics ours.)

The only thing which the Collector indicated was the amount that appeared to be refundable. As to the credits, he reported not that they should be applied but that they "have been applied." The Court then said "this is examined by the Assistant Commissioner and then is delivered to the Commissioner, who makes it effective by his approval." We submit that this Court had under consideration only the question of refunds and not the question of credits, and that in stating that the Commissioner made "it effective by his approval," the

Court referred only to making effective the recommendation of the Collector that a certain amount was to be refunded. Had the Commissioner intended to approve credits made by the Collector, it is apparent that he would have made reference to credits and used language expressing approval. That this statement referred only to refunds and not to credits is indicated by the statement of this Court (p. 171):

> Until it reaches him [the Commissioner] and is approved by him the *refund* can not be made. (Italics ours.)

We submit that the *Girard Trust Co. case* supports the contention of the Government that there is a distinction between the time of the allowance of a credit and the time of the allowance of a refund, and that a credit is allowed when the Commissioner gives the direction to the Collector to make the credit.

Few courts have passed upon the precise question here presented. The Court of Claims has consistently held, in accord with the decisions below, that a credit is allowed when the Commissioner signs the schedule of refunds and credits. See, for example, *Kingan & Co., Inc.*, v. *United States*, decided October 20, 1930, and reported in Par. 1824 of 1930 Prentice-Hall Federal Tax Service. But see *Penn Smokeless Coal Company* v. *United States* (W. D. Pa.) 34 F. (2d) 205, *contra*. Apparently no other courts have passed on the question.

III

THIS CONSTRUCTION HAS BEEN ADOPTED FROM THE FIRST BY THE TREASURY REGULATIONS, AND CONGRESS HAS CONFIRMED IT BY REENACTMENT OF STATUTES WITH SIMILARLY WORDED PROVISIONS

Upon the enactment of Section 1324 (a) of the Revenue Act of 1921, which contained the first provision for interest on credits and refunds, the Treasury Department promulgated Regulations No. 62. Article 1040 of these Regulations provides in part:

> A claim for refund or credit is allowed within the meaning of the statute when the Commissioner approves the schedule in whole or in part, for transmission to the proper accounting officer for credit or refund.

Moreover, it is established that (*Iron Cap Copper Co.* R. 29):

> the bureau has uniformly[3] held that the date of the allowance of a credit is the date upon which the commissioner signs the schedule of overassessments and that all interest adjustments so far as made voluntarily by the bureau, have been made under this rule.

---

[3] The only lapse from this uniformity was during the four months' period when Treasury Decision 3850, C. B. V–1, p. 354, was in effect. Treasury Decision 3850 was published April 8, 1926, and contained a copy of the opinion in the *Girard Trust Co. case*, which was decided March 1, 1926. The Treasury Decision, apparently following the *dictum* in the *Girard Trust Co. case*, stated in substance that there was no distinction between the allowance of a credit

This Court has repeatedly held that great weight is to be given to the interpretation of an Act of Congress by the Department entrusted with its enforcement. See, for example, *United States* v. *Bank of North Carolina*, 6 Pet. 29; *United States* v. *Mo. Pac. R. Co.*, 278 U. S. 269.

This principle is peculiarly applicable to the instant situation. The construction urged by the Government is not in violation of any statute. It is reasonable. Many cases have been closed in accordance with this departmental regulation. Any other construction would work injustice to those who have accepted interest computations without objection.

Where a statute has received uniform construction by the administrative department entrusted with its enforcement and the statute is later reenacted in substantially the same language, Congress may be considered to have included this administrative construction in the reenactment. *National Lead Co.* v. *United States*, 252 U. S. 140. A recent restatement of this familiar principle may be found in *Brewster* v. *Gage*, 280 U. S. 237.

---

and refund. Treasury Decision 3919 (C. B. V–2, p. 209) published August 25, 1926, again set forth the opinion in the *Girard Trust Co. case*, revoked the earlier ruling and in substance stated that a refund was allowed on the date of approval of the schedule of refunds and credits by the Commissioner, and omitted all reference to allowance of credits. Apparently the first decision was a hurried and ill-considered interpretation of the effect of the opinion in the *Girard Trust Co. case.*

The statutes and regulations affording the basis for the application of this principle to the instant cases are the following:

By Section 1324 (a) of the Revenue Act of 1921 Congress provided:

> That upon the allowance of a claim for the refund of or credit for internal revenue taxes paid, interest should be allowed * * *.

The Treasury Department thereupon adopted Section 1040 of Regulations 62 (*infra*, p. 44).

By Section 1019 of the Revenue Act of 1924, Congress provided:

> Upon the allowance of a credit or refund of any internal-revenue tax * * * interest shall be allowed and paid * * *.

The Treasury Department then adopted Article 1371 of Regulations 65, which contained the following:

> A claim for credit or refund is "allowed" within the meaning of the statute when the Commissioner approved the schedule in whole or in part for transmission to the proper accounting officer for credit or refund.

When the *Girard Trust Co. case* was argued in this Court on January 14th and 15th, 1926, the question of the date of allowance of a claim for refund was submitted for determination. Congress by Section 1116 (b) (2) of the Revenue Act of 1926, effective February 26, 1926, provided:

> The term "date of the allowance of the refund" means in the case of any income, war-profits, or excess-profits tax, the first date on which the Commissioner signs the schedule of overassessments in respect thereof.

This was three days prior to the decision by the Court in the *Girard Trust Co. case* holding that refunds were allowed when the Commissioner signed the second schedule.

Not only did Congress approve the practice in the Bureau by the enactment of Section 1019 of the Revenue Act of 1924, but in the Act of 1926 it gave express approval of this practice after it was aware that in the *Girard Trust Co. case* the practice and interpretation of the Bureau had been challenged. Section 1116 of the Revenue Act of 1926 was repealed by Section 614 of the Revenue Act of 1928 because by that section the date of the allowance of a refund lost its significance, and interest on refunds was computed to a date 30 days before that of the refund check.

CONCLUSION

It is respectfully submitted that the decisions of the court below were erroneous and that its judgments should be reversed.

THOMAS D. THACHER,
Solicitor General.
CHARLES B. RUGG,
Assistant Attorney General.
CLAUDE R. BRANCH,
Special Assistant to the Attorney General.
CHARLES R. POLLARD,
BRADLEY B. GILMAN,
Attorneys.

C. M. CHAREST,
General Counsel,
Bureau of Internal Revenue.
RALPH E. SMITH,
Attorney,
Bureau of Internal Revenue.

DECEMBER, 1930.

APPENDIX A

Statutes and Regulations Involved

STATUTES

Revised Statutes, Sec. 3218 (U. S. C., Title 26, Sec. 147), provides in part:

> Every collector shall be charged with the whole amount of taxes, whether contained in lists transmitted to him by the Commissioner of Internal Revenue, or by other collectors, or delivered to him by his predecessor in office, and with the additions thereto, with the par value of all stamps deposited with him, and with all moneys collected for penalties, forfeitures, fees, or costs; * * *.

Revenue Act of 1918, c. 18, 40 Stat. 1057, 1083, 1085, 1145, provides in part:

> Sec. 250. (b) As soon as practicable after the return is filed, the Commissioner shall examine it. If it then appears that the correct amount of the tax is greater or less than that shown in the return, the installments shall be recomputed. If the amount already paid exceeds that which should have been paid on the basis of the installments as recomputed, the excess so paid shall be credited against the subsequent installments; and if the amount already paid exceeds the correct amount of the tax, the excess shall be credited or refunded to the taxpayer in accordance with the provisions of section 252. * * *

SEC. 252. That if, upon examination of any return of income made pursuant to this Act, the Act of August 5, 1909, entitled "An Act to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes," the Act of October 3, 1913, entitled "An Act to reduce tariff duties and to provide revenue for the Government, and for other purposes," the Revenue Act of 1916, as amended, or the Revenue Act of 1917, it appears that an amount of income, war-profits, or excess-profits tax has been paid in excess of that properly due, then, notwithstanding the provisions of section 3228 of the Revised Statutes, the amount of the excess shall be credited against any income, war-profits or excess-profits taxes, or installment thereof, then due from the taxpayer under any other return, and any balance of such excess shall be immediately refunded to the taxpayer: *Provided*, That no such credit or refund shall be allowed or made after five years from the date when the return was due, unless before the expiration of such five years a claim therefor is filed by the taxpayer.

SEC. 1316. (a) That section 3220 of the Revised Statutes is hereby amended to read as follows:

"SEC. 3220. The Commissioner of Internal Revenue, subject to regulations prescribed by the Secretary of the Treasury, is authorized to remit, refund, and pay back all taxes erroneously or illegally assessed or collected, all penalties collected without authority, and all taxes that appear to be unjustly assessed or excessive in amount, or in any manner wrongfully collected; also to repay to any collector or deputy collector the full amount of such sums of money as may be recovered

against him in any court, for any internal-revenue taxes collected by him, with the cost and expenses of suit; also all damages and costs recovered against any assessor, assistant assessor, collector, deputy collector, agent, or inspector, in any suit brought against him by reason of anything done in the due performance of his official duty, and shall make report to Congress at the beginning of each regular session of Congress of all transactions under this section."

Revenue Act of 1921, c. 136, 42 Stat. 227, 264, 268, 316, provides in part:

SEC. 250 (b). (Same as Section 250 (b) of the Revenue Act of 1918, above quoted.)

SEC. 252. (Same as Section 252 of the Revenue Act of 1918, above quoted.)

SEC. 1324 (a). That upon the allowance of a claim for the refund of or credit for internal revenue taxes paid, interest shall be allowed and paid upon the total amount of such refund or credit at the rate of one-half of 1 per centum per month to the date of such allowance, as follows: (1) if such amount was paid under a specific protest setting forth in detail the basis of and reasons for such protest, from the time when such tax was paid, or (2) if such amount was not paid under protest but pursuant to an additional assessment, from the time such additional assessment was paid, or (3) if no protest was made and the tax was not paid pursuant to an additional assessment, from six months after the date of filing of such claim for refund or credit. The term "additional assessment" as used in this section means a further assessment for a tax of the same character previously paid in part.

Revenue Act of 1924, c. 234, 43 Stat. 253, 296, 301, 346 (U. S. C., Title 26, Secs. 1045, 1046, 1065, 153), provides in part:

> SEC. 271. As soon as practicable after the the return is filed the Commissioner shall examine it and shall determine the correct amount of the tax.
>
> SEC. 272. If the taxpayer has paid as an installment of the tax more than the amount determined to be the correct amount of such installment, the excess shall be credited against the unpaid installments, if any. If the amount already paid, whether or not on the basis of installments, exceeds the amount determined to be the correct amount of the tax, the excess shall be credited or refunded as provided in section 281.
>
> * * * * *
>
> SEC. 281. (a) Where there has been an overpayment of any income, war-profits, or excess-profits tax imposed by this Act, the Act entitled "An Act to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes," approved August 5, 1909, the Act entitled "An Act to reduce tariff duties and to provide revenue for the Government, and for other purposes," approved October 3, 1913, the Revenue Act of 1916, the Revenue Act of 1917, the Revenue Act of 1918, or the Revenue Act of 1921, or any such Act as amended, the amount of such overpayment shall be credited against any income, war-profits, or excess-profits tax or installment thereof then due from the taxpayer, and any balance of such excess shall be refunded immediately to the taxpayer.
>
> * * * * *
>
> SEC. 1019. Upon the allowance of a credit or refund of any internal-revenue tax errone-

ously or illegally assessed or collected, or of any penalty collected without authority, or of any sum which was excessive or in any manner wrongfully collected, interest shall be allowed and paid on the amount of such credit or refund at the rate of 6 per centum per annum from the date such tax, penalty, or sum was paid to the date of the allowance of the refund, or in case of a credit, to the due date of the amount against which the credit is taken, but if the amount against which the credit is taken is an additional assessment, then to the date of the assessment of that amount. The term "additional assessment" as used in this section means a further assessment for a tax of the same character previously paid in part.

Revenue Act of 1926, c. 27, 44 Stat. 9, 55, 66, 119, provides in part:

SEC. 271. As soon as practicable after the return is filed the Commissioner shall examine it and shall determine the correct amount of the tax.

SEC. 272. If the taxpayer has paid as an installment of the tax more than the amount determined to be the correct amount of such installment, the excess shall be credited against the unpaid installments, if any. If the amount already paid, whether or not on the basis of installments, exceeds the amount determined to be the correct amount of the tax, the excess shall be credited or refunded as provided in section 284.

* * * * *

SEC. 284. (a) Where there has been an overpayment of any income, war-profits, or excess-profits tax imposed by this Act, the Act entitled "An Act to provide revenue, equalize duties, and encourage the industries of the United States, and for other

purposes," approved August 5, 1909, the Act entitled "An Act to reduce tariff duties and to provide revenue for the Government, and for other purposes," approved October 3, 1913, the Revenue Act of 1916, the Revenue Act of 1917, the Revenue Act of 1918, the Revenue Act of 1921, or the Revenue Act of 1924, or any such Act as amended, the amount of such overpayment shall, except as provided in subdivision (d), be credited against any income, war-profits, or excess-profits tax or installment thereof then due from the taxpayer, and any balance of such excess shall be refunded immediately to the taxpayer.

* * * * *

SEC. 1116. (a) Upon the allowance of a credit or refund of any internal-revenue tax erroneously or illegally assessed or collected, or of any penalty collected without authority, or of any sum which was excessive or in any manner wrongfully collected, interest shall be allowed and paid on the amount of such credit or refund at the rate of 6 per centum per annum from the date such tax, penalty, or sum was paid to the date of the allowance of the refund, or in the case of a credit, to the due date of the amount against which the credit is taken, but if the amount against which the credit is taken is an additional assessment made under the Revenue Act of 1921, the Revenue Act of 1924, or this Act, then to the date of the assessment of that amount.

(b) As used in this section—

(1) The term "additional assessment" means a further assessment for a tax of the same character previously paid in part, and includes the assessment of a deficiency under Title II or Title III of the Revenue Act of 1924 or of this Act;

(2) The term "date of the allowance of the refund" means, in the case of any income, war-profits, or excess-profits tax, the first date on which the Commissioner signs the schedule of overassessments in respect thereof.

(c) This section shall be applicable to any refund paid, and to any credit taken, on or after the date of the enactment of this Act, even though such refund or credit was allowed prior to such date.

REGULATIONS

Article 1040 of Regulations 62, promulgated under the Revenue Act of 1921, provides in part:

ART. 1040. *Interest on refunds and judgments.*—Section 1324 of the Act provides that after the passage of the Act interest in certain cases shall be paid on refunds or credits of internal revenue taxes paid under this or prior internal revenue acts to the date of the allowance of such refunds or credits at the rate of one-half of 1 per cent per month. A claim for refund or credit is allowed within the meaning of the statute when the Commissioner approves the schedule in whole or in part, for transmission to the proper accounting officer, for credit or refund. * * *

Article 1371 of Regulations 65, promulgated under the Revenue Act of 1924, provides in part:

ART. 1371. *Interest on refunds and credits.*—Section 1019 of the act provides that upon the allowance of a credit or refund of any internal-revenue tax erroneously or illegally assessed or collected, or any penalty collected without authority, or of any sum which was excessive or in any manner wrong-

fully collected, interest upon such credits or refund shall be paid at the rate of 6 per cent per annum. A claim for credit or refund is "allowed" within the meaning of the statute when the Commissioner approves the schedule in whole or in part for transmission to the proper accounting officer for credit or refund. * * *.

Article 1371 of Regulations 69, promulgated under the Revenue Act of 1926, provides in part:

ART. 1371. *Interest on refunds and credits.*—Section 1116 provides that upon the allowance of a credit or refund of any internal revenue tax erroneously or illegally assessed or collected, or any penalty collected without authority, or of any sum which was excessive or in any manner wrongfully collected, interest upon such credit or refund shall be paid at the rate of 6 per cent per annum. A refund is "allowed" within the meaning of section 1116 when the Commissioner first signs the schedule of overassessment covering the particular refund. * * *.

APPENDIX B

1. Schedule of Overassessments (Form 7805).
2. Schedule of Refunds and Credits (Form 7805–A).

U. S. GOVERNMENT PRINTING OFFICE: 1939

TREASURY DEPARTMENT
U. S. INTERNAL REVENUE SERVICE
FORM 7805
Form approved by Comptroller General
Feb. 5, 1923

IMMEDIATE

This schedule must be executed and all required steps taken without delay.

COMMISSIONER OF INTERNAL REVENUE.

SCHEDULE OF OVERASSESSMENTS
AND
ALLOWANCE OF ABATEMENTS, CREDITS, REFUNDS, AND RELATED CLAIMS, IF AN

INCOME TAX UNIT

CERTIFICATE OF DEPUTY COMMISSIONER

Commissioner of Internal Revenue:

The returns of the taxpayers listed herein, together with their claims (if any) and appropriate supporting evidence, have been carefully examined and the tax liability of the respective taxpayers has been determined in accordance with the available facts and the law. The overassessments or reductions in tax liability appearing in column 4 are accordingly recommended for allowance.

Date MAR. 29, 1924.

-SIGNED- J. G. BRIGHT

Deputy Commissioner.

AUTHORIZATION OF COMMISSIONER

To the Collector..... *District of* MASSACHUSETTS

The amounts listed in column 4 as overassessments (or reductions of tax liability) are hereby approved, and the related claims, if any, allowed in the respective amounts of Overassessment" or "Notices of Adjustment of Refund" attached thereto.

You will immediately check such items against the accounts of the several taxpayers, and determine whether the amounts in which the tax liabilities have been reduced in whole or in part, and make such abatements as may be warranted by the condition of the taxpayers' accounts for the years involved.

If any part of any such item is found to be an overpayment, you will examine all accounts of the taxpayer for other periods and apply the overpayment as a credit against the appropriate entries in your accounts. (This applies only to income, war profits, and excess profits taxes.) Such credits will be entered in column 9, and placed in column Refunds and Credits (Form 7805-A).

The balance, if any, of the overpayment will be entered in column 12, and placed in column 4 of the subsidiary schedule (Form 7805-A) referred to above, and an ap upon the taxpayer's account.

You will thereupon complete and certify this schedule and the schedule upon Form 7805-A, and return the necessary copies of each to the Commissioner of Internal Re

Date MAR. 29, 1924

-SIGNED- D. H. BLAIR

C

Item No.	Certificate of Overassessment or Claim Number	Name and Address of Taxpayer	Overassessments or Reductions of Tax Liability (Amount)	List, Page, and Line, or Account Number	Taxable Year	Abatement (Amount)	Overpayment (Amount)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
6	241355	Iron Cap Copper Co.	180,322 66	May '21 P111-13	18	48,539 94	131,782 72
7	241467	Iron Cap Copper Co.	258 29	June '21 P100-19	19	258 29	

1930

SCHEDULE OF OVERASSESSMENTS

AND

ALLOWANCE OF ABATEMENTS, CREDITS, REFUNDS, AND RELATED CLAIMS, IF ANY

ORIGINAL

Voucher to General Accounting Office

Schedule No. IT-A-

Sheet 1 of 2 *sheets*

INCOME TAX UNIT

District of MASSACHUSETTS

AUTHORIZATION OF COMMISSIONER

MASSACHUSETTS

actions of tax liability) are hereby approved, and the related claims, if any, allowed in the respective amounts indicated by the "Certificates hed thereto.

s of the several taxpayers, and determine whether the amounts in which the tax liabilities have been reduced should be respectively abated, ited by the condition of the taxpayers' accounts for the years involved.

, you will examine all accounts of the taxpayer for other periods and apply the overpayment as a credit against the taxes due, if any, making income, war profits, and excess profits taxes.) Such credits will be entered in column 9, and placed in column 5 of a subsidiary Schedule of

column 12, and placed in column 4 of the subsidiary schedule (Form 7805-A) referred to above, and an appropriate *memorandum* made

the schedule upon Form 7805-A, and return the necessary copies of each to the Commissioner of Internal Revenue.

-SIGNED- D. H. BLAIR

Commissioner of Internal Revenue.

CERTIFICATE OF COLLECTOR

To the Commissioner of Internal Revenue:

The items in this schedule have been checked against the accounts of the respective taxpayers concerned and the amounts indicated have been applied as abatements and credits on their accounts.

The amounts of overpayment and the net amounts refundable have been determined to be as indicated herein.

Date JULY 14, 1924

-SIGNED- M. E. NICHOLS

Collector ..... *District of* MASS.

ACCOUNTS UNIT

Noted and entered

INITIALS	DATE

(Entries to be made by the Collector)

	List, Page, and Line, or Account Number (5)	Taxable Year (6)	Abatement (Amount) (7)		Overpayment (Amount) (8)		Credit (Amount carried to Form 7805-A) (9)	Account Credited: List, Page, and Line (10)	Due Date of Items Against Which Credit Was Made (11)	Net Amount Refundable Carried to Form 7805-A (12)		Remarks (13)	
36	May '21 P111-13	18	48,539	94	131,782	72	See	Attached For Credits		28,850	83	"	"
29	June '21 P100-19	19	258	29								"	"

TREASURY DEPARTMENT
U. S. INTERNAL REVENUE SERVICE
Form 7805-A
Form approved by Comptroller General
Feb. 5, 1923

IMMEDIATE

This schedule must be executed and all required steps taken without delay.

COMMISSIONER OF INTERNAL REVENUE.

SCHEDULE OF REFUNDS AND CREDITS

ILLEGAL OR ERRONEOUS COLLECTIONS

INCOME TAX UNIT

CERTIFICATE OF COLLECTOR

To the Commissioner of Internal Revenue:

The items hereon are relisted as they appeared for refund or credit on an original schedule (bearing the same number) of overassessments and related claims, if any, heretofore approved and allowed by the Commissioner of Internal Revenue. An examination of the accounts of the several taxpayers named disclosed such items to be the portions of such previously allowed overassessments or reductions of tax liability subject to refund or credit.

Date July 14, 1924.

(Signed) M. E. NICHOLS.

Collector, ... *District of* MASS.

CERTIFICATE OF DEPUTY COMMISSIONER

Commissioner of Internal Revenue:

The items listed in column 4 hereof have been found to be the refundable portions of overassessments heretofore allowed, and the accrued interest, if any, listed in column 6 has been found due.

Date AUG. 7, 1924.

(Signed) J. G. BRIGHT,

Deputy Commissioner.

To the Dis

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Date AU

Item No. (1)	Certificate of Overassessment or Claim Number (2)	Name and Address of Taxpayer (3)	Net Amount Refundable (4)	Amount Credited (5)	(Not to be used by Collector) Interest Accrued (6)	(Not to be used by Collector) Total Refundable (7)	Date of Final Payments of Accounts from which Credits were Transferred and Overpayments Found (8)
6	241355	Iron Cap Copper Co.	28850 83	102931 89		28850 83	12-17-19

SCHEDULE OF REFUNDS AND CREDITS

ORIGINAL
Voucher to General Accounting Office

Schedule No. IT - R - 9751

Sheet 1 of ..... *Sheets.*

..... *Dist. of* MASS.

D. C. Voucher No. 184

ILLEGAL OR ERRONEOUS COLLECTIONS

INCOME TAX UNIT

UNIT	NOTATIONS	DATE
A & C	Hz	8-14-24

CERTIFICATE OF DEPUTY COMMISSIONER

Commissioner of Internal Revenue:

The items listed in column 4 hereof have been found to be the refundable portions of overassessments heretofore allowed, and the accrued interest, if any, listed in column 6 has been found due.

Date AUG. 7, 1924.

(Signed) J. G. BRIGHT,

Deputy Commissioner.

AUTHORIZATION OF COMMISSIONER

To the Disbursing Clerk, Treasury Department:

The items listed in column 4 hereof have been found to be the refundable portions of overassessments heretofore allowed, and the accrued interest, if any, listed in column 6 has been found due. Payment may, therefore, be made in the amounts shown in column 7.

Date AUG. 7, 1924.

(Signed) D. H. BLAIR,

Commissioner of Internal Revenue.

Amount Credited (5)	(Not to be used by Collector) Interest Accrued (6)	(Not to be used by Collector) Total Refundable (7)	Date of Final Payments of Accounts from which Credits were Transferred and Overpayments Found (8)	(Not to be used by Collector) Refunding Taxes Illegally Collected 1925 and Prior Years (9)	19..... (10)	19..... (11)	Paid by Disbursing Clerk, Treas. Dept., by Checks Dated Aug. 21, 1924 Numbered as Follows: (12)	Remarks (13)
102931 89		28850 83	12-17-19	28850 83			470668	

24620—30. (Face p. 46.) No. 2